

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-20, 96, and 97 are pending in the application, with claims 1, 96, and 97 being the independent claims. Claims 21-95 were previously cancelled. Claims 1 and 10 are currently amended to clarify Applicants' techniques. These changes are believed to introduce no new matter, and their entry is respectfully requested. These amendments should be entered after final because they place the claims in better condition for allowance and/or reduce the issues for appeal.

Accordingly, based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 1-6, 11, 16, 17, 96, and 97

On pages 3-6 of the Office Action, claims 1-6, 11, 16, 17, 96, and 97 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 5,873,069 to Reuhl *et al.* (hereinafter "Reuhl") in view of U.S. Patent No. 6,102,969 to Christianson (hereinafter "Christianson"). On page 3 of the Office Action, the Examiner states that these claims are rejected under "35 U.S.C. § 102(e)" [sic] over Reuhl and in view of Christianson. Applicants assume the Examiner's rejection for these claims is under 35 U.S.C. § 103(a) as indicated by the Examiner on page 2 of the Office Action. Applicants respectfully traverse this rejection.

Claim 1 recites, among other features: “detecting, at a remote computer, product purchase information of a plurality of different retailers from points-of-sale associated with the respective retailers”; “receiving, at the remote computer, a shopping list of a customer, the shopping list including at least one item; and in response to receiving a shopping list initiating communication, to the customer via the remote computer, of price information associated with the at least one item on the shopping list for the plurality of retailers.”

On page 3 of the Office Action, the Examiner states that the above-recited features of claim 1 are disclosed in Reuhl in lines 18-28 of column 3, lines 64-68 of column 8, lines 15-32 of column 10, lines 11-23 of column 11, and Fig. 8. Applicants are unable to identify in the sections of Reuhl cited by the Examiner, or in other sections, any teaching or suggestion upon which the elements of “*detecting* product purchase information at a plurality of *different* retailers from points-of-sale associated with the respective retailers”, as recited in claim 1. In contrast, Reuhl's system requires a user to *input* product and price data of a competitor, including the “competitor's shopped prices and advertised prices” (Reuhl, col. 4, lns. 14-16 and 30-35, col. 9, lns. 1-4, col. 15, lns. 11-24 and 34-44, col. 16, lns. 5-27).

On page 3 of the Office Action, the Examiner characterizes Reuhl's “enterprise-wide” price processing system for “a retailer with many locations” (Reuhl, col. 3, lns. 18-23) as detecting product purchase information from a plurality of *different* retailers, on a computer remote from the retailers, as recited in claim 1. Applicants respectfully disagree with this characterization and submit that Reuhl's system is limited to “price management and a central system for a plurality of goods in a plurality of markets” for a

single retailer that “prices and reprices items responsive to market changes, such as competitors' shopped prices and competitors' ad price” wherein competitor's advertised and shopped prices are inputted into the centralized system (Reuhl, col. 3, lns. 18-22, col. 4, lns. 14-19, col. 18, lns. 28-33).

In Reuhl, an advertised price is defined as “a price for an item described or shown in an advertisement, written or otherwise, usually valid for a prescribed time period” (Reuhl, col. 6, lns. 57-61). In contrast, claim 1 recites “*detecting*” product purchase information “at a remote computer” (emphasis added). The shopped price is defined in Reuhl as “the price on the competitor's price tag on an item” (Reuhl, col. 6, lns. 54-57). In Reuhl's system, the user must input product and price data using a plurality of entry screens, as described, for example, at Col. 14, line 65 to Col. 15, line 24, Col. 15, lines 34-44, and Col. 16, lines 5-27 of Reuhl.

Although Reuhl may disclose a system that automatically adjusts a retailer's prices in response to user-inputted competitor's advertised and shopped prices, inputting competitor prices into a plurality of entry screens (Reuhl, col. 4, lns. 14-16, col. 9, lns. 43-48, col. 11, lns. 11-26 and 34-44, FIGs. 16, 18, and 19), Reuhl lacks any teaching or suggestion of “detecting” “product purchase information at a plurality of different retailers from points-of-sale associated with the respective retailers”, as recited in claim 1.

On page 4 of the Office Action, the Examiner concedes that Reuhl does not disclose “detecting price information of a plurality of different retailers from points-of-sale associated with the respective retailers”, as recited in claim 1. Christianson does not cure the deficiencies mentioned above for Reuhl with regards to claim 1. While

Christianson may disclose returning prices for items for sale “upon user request” for “a given query”, “forwarding the query to the most relevant information sources, understanding the responses returned from each source, and integrating and intelligently presenting the query results to the user” (Christianson, col. 2, lns. 54-61, col. 6, lns. 26-27), Christianson does not teach or suggest *detecting*, at a remote computer, *product purchase information* of a plurality of different retailers from points-of-sale associated with the respective retailers, the product purchase information including at least price information, as recited in claim 1.

In contrast to the above recited purchase detection features of claim 1, Christianson requires that “a query router receives as input a user query expressed as a list of words or keywords” (Christianson, col. 14, lns. 44-47). Further, Christianson is limited to returning information such as “product name, model, and price” for an item for sale (Christianson, col. 6, lns. 7-11 and 32-37) and contains no teaching or disclosure of detecting and communicating *product purchase* information, as recited in claim 1.

Applicants respectfully submit that neither Reuhl nor Christianson, alone or in combination, teach, suggest, or disclose detecting purchase price information from a plurality of different retailers from points-of-sale associated with the respective retailers, as recited in claim 1. Accordingly, Applicants assert that claim 1 is patentable over Reuhl and Christianson, alone or in the allegedly obvious combination. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claim 1, and find it allowable over the applied references.

Also, at least based on their respective dependencies to claim 1, claims 2-20 should be found allowable over the applied reference, as well as for their individual respective distinguishing features. Dependent claims 2-20, which depend upon independent claim 1, are allowable for at least being dependent from an allowable independent claim, in addition to their own respective distinguishing features. See *In Re Fine*, 837 F.2d 1071 (Fed. Cir. 1988) and M.P.E.P. § 2143.03. Accordingly, Applicants respectfully request this rejection be removed and that these claims be passed to allowance.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this rejection of these claims, and find them allowable over the applied references.

Claims 96 and 97

Independent claims 96 and 97 are patentable over the applied references for reasons similar to those set forth above with respect to independent claim 1, and further in view of its own respective features.

More particularly, claim 96 recites a remote computer comprising a processor; a memory accessible by the processor; and a computer program stored in the memory, wherein the computer program is operable to be executed on the processor and further operable to detect product purchase information of a plurality of different retailers from points-of-sale associated with the respective retailers located remotely from the remote computer, the product purchase information including price information; receive a shopping list of a customer, the shopping list including at least one item; and in response to receiving the shopping list, initiate communication to the customer of price

information associated with the at least one item for each of the retailers. Claim 97 recites an article comprising a medium for storing instructions that enables a remote computer to detect product purchase information of a plurality of different retailers from points-of-sale associated with the respective retailers located remotely from the remote computer, the product purchase information including price information; receive a shopping list of a customer, the shopping list including at least one item; and in response to receiving the shopping list, initiate communication to the customer of price information associated with the at least one item for each of the retailers.

The computer program and article of claims 96 and 97, respectively, enable a remote computer to detect product purchase information of a plurality of different retailers from points-of-sale associated with the respective retailers located remotely from the remote computer. Thus, for at least the reasons stated above, Applicants respectfully submit that claims 96 and 97 are patentable over Reuhl and Christianson, and request that the rejection of these claims be reconsidered and withdrawn.

Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 96 and 97.

Claims 7-10

On page 7 of the Office Action, claims 7-10 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Reuhl in view Christianson and in further view of U.S. Patent Application Publication No. 2001/0014868 to Herz *et al.* (hereinafter “Herz”). Applicants respectfully traverse this rejection.

Claims 7-10, which depend from independent claim 1, are also patentable over the applied references for reasons similar to those set forth above with respect to Applicants' claim 1, and further in view of their own respective features.

On page 7 of the Office Action, the Examiner concedes that Reuhl and Christianson do not disclose storing product purchase information from the plurality of retailers in association with customer identification numbers, but states that Herz teaches customizing prices and promotions tailored to shoppers by storing product information from a plurality of stores in association with customer identification numbers. Herz does not cure the deficiencies of Reuhl and Christianson with regards to claims 7-10. Although Herz may disclose a system to determine customized prices and promotions to *offer* to a shopper, wherein the shopper is identified by a name or number (Herz, paragraph [0024]), Herz does not teach or suggest storing product *purchase* information from a plurality of retailers in association with customer identification numbers, as recited in claim 7.

Claims 8-10, which depend from dependent claim 7, are also patentable over the applied references for reasons similar to those set forth above with respect to claim 7, and further in view of their own distinguishing features.

Accordingly, Applicants assert that claims 7-10 are patentable over the applied references, alone or in any rational combination. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 7-10.

Claims 12-15 and 18-20

On page 8 of the Office Action, claims 12-15 and 18-20 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Reuhl in view of the Examiner's Official Notice. Applicants respectfully traverse this rejection.

Claims 12-15 and 18-20, which depend from independent claim 1, are also patentable over the applied references for reasons similar to those set forth above with respect to claim 1, and further in view of their own respective distinguishing features.

On page 8 of the Office Action, the Examiner concedes that Reuhl and Christianson do not teach communicating an incentive comprising a discount on at least one item in a customer's shopping list or communicating a discount on an item competitive with the at least one item. Applicants submit that the Examiner's Official Notice does not provide the teachings missing from Reuhl and Christianson.

In the "Response to Arguments" section of the Office Action on page 10 of the Office Action, the Examiner states that "using discounts as incentives is considered admitted as prior art." Applicants respectfully submit that the Examiner appears to have misinterpreted Applicants' previous arguments in relation to the Examiner's Official Notice. Applicants disagree with the Examiner's conclusion and reasoning on page 10 of the Office Action and dispute the Examiner's statement on page 8 of the Office Action that using the types of incentives recited in claims 12-15 and 18-20 are "old and well known in the art" at the time of Applicants' invention. Applicants disputed the Official Notice in the previous Office Action regarding communication of incentives such as discounts on a product competitive with an item in a customer's shopping list, as recited in claims 12-15 and 18-20.

Applicant respectfully submits that communicating incentives such as discounts on a product competitive with an item in a customer's shopping list, as recited in claims 12-15 and 18-20 was not well known in the art at the time, and Applicant submits that the above recited event-triggered key changing features of claims 12-15 and 18-20 were not well known or conventional in the art or obvious.

Applicant respectfully points out that pursuant to M.P.E.P. § 2143.01(A), the Examiner cannot remedy the deficiency as noted above in the teaching of the Reuhl reference merely by asserting what is “very common” in the art; rather, the Patent Office must demonstrate all claim limitations based on substantial evidentiary support. See *In re Zurko*, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001). For example, this section of the M.P.E.P. states (emphasis added):

[T]he facts asserted to be well-known, or to be common knowledge in the art **are capable of instant and unquestionable demonstration** as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be **“capable of such instant and unquestionable demonstration as to defy dispute”** (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

Applicant submits that this proof is not found in the conclusory rejection made by the Examiner, and thus the Examiner’s use of Official Notice is improper. Applicant reminds the Examiner that the Administrative Procedure Act requires that the Examiner’s rejections employ “reasoned decision making” based on evidence from a fully developed administrative record. See *In re Lee*, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002). Patentability determinations which are based on what the Examiner believes is “basic knowledge” and “common”, and that otherwise lack substantial evidentiary support, are impermissible. See *In re Zurko*, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001).

Therefore, Applicant respectfully traverses the rejections of claims 12-15 and 18-20 on the ground that the aforementioned "Official Notice" lacks "substantial evidentiary support." Thus, the Examiner is asked to produce substantial evidentiary support (e.g., produce a reference) with respect to the subject matter claimed in claims 12-15 and 18-20, or withdraw the rejection of these claims.

Accordingly, Applicants submit that claims 12-15 and 18-20 are patentable over the applied reference and the Examiner's Official Notice, alone or in combination.

Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 12-15 and 18-20.

Other Matters

Applicants acknowledge with gratitude the Examiner's acceptance of the drawings in light of previously-entered amendments to the specification filed on August 18, 2007, as indicated on page 10 of the Office Action.

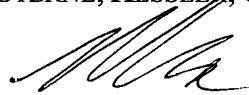
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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